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OFFICE OF PETITIONS

In re Application of
Shiga
Application No. 09/760,399
Filed: January 12, 2001
Attorney Docket No. 9281-3876

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: DECISION HELD IN ABEYANCE
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This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(d)," filed October 12, 2004. Applicants request that the patent issuing from the above-identified patent application be afforded a patent term adjustment of one hundred and ninety-seven (197) additional days, to eight hundred and fifty-two (852) days. The sole basis for this request is the Office taking in excess of three years to issue the patent.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining

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whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges authorization to charge a fee of the \$200.00 fee set forth in 37 CFR 1.18(e) to Deposit Account 23-1925 . No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. Any delays in issuing the application more than four months after payment of the issue fee and other requirements being satisfied will be reflect in the issue notification letter mailed approximately 3 weeks prior to issuance.

Telephone inquiries specific to this matter should be directed to Kery Fries at 571-272-7757.

A handwritten signature in black ink, appearing to read 'Kery Fries', with a stylized flourish at the end.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy